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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of STEPHEN DAWES
and JULIE MARIE WEST-DAWES.

H037291
(Santa Clara County
Super. Ct. No. FL136198)

STEPHEN DAWES,

Appellant,

v.

JULIE MARIE WEST-DAWES,

Respondent.

I. INTRODUCTION

Appellant Stephen Dawes and respondent Julie Marie West-Dawes were married for over 17 years and had three children.¹ In 2006, the parties separated and a petition for dissolution of marriage was filed. At issue in the present appeal is the trial court's August 3, 2011 "order after report and recommendation by referee after trial." Stephen challenges the trial court's order with respect to the calculation of the amounts he owes for child support, spousal support, and attorney's fees, contending that the trial court failed to include Julie's income from illegal activity. Stephen also challenges the order

¹ Adopting the practice in the proceedings below, we will hereafter refer to the parties and Jason West, Julie's brother, by their first names for purposes of clarity and meaning no disrespect. (*In re Marriage of West* (2007) 152 Cal.App.4th 240, 242, fn. 1.)

with respect to his obligation to pay private school tuition. For the reasons stated below, we will vacate the August 3, 2011 order and remand the matter for the limited purpose of further proceedings regarding Julie's income and reconsideration of the orders for child support, spousal support, attorney's fees, and payment of private school tuition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Our brief summary of the factual and procedural background is taken from the limited record available on appeal.

A. Background

Stephen and Julie were married on September 8, 1988, and separated on July 1, 2006. The record on appeal does not indicate whether a judgment of dissolution has been filed. They had three children during the marriage. Only one child was a minor at the time of the April 2011 trial that is at issue in this appeal.

Prior to trial, the parties litigated the issues of child support, spousal support, and payment of the children's private school tuition. The record reflects that Stephen was ordered to pay spousal support of \$1,445 per month, effective November 18, 2006. He was also ordered to pay child support for three minors in the amount of \$3,043 per month, effective November 18, 2006, modified to \$3,195 per month from February 1, 2007, through June 15, 2007, and then modified to \$2,441 per month from June 15, 2007 onward. Stephen was also responsible for payment of the children's private school tuition.

B. April 2011 Trial Before the Referee

The referee was appointed pursuant to Code of Civil Procedure section 638 to hear and try the matters enumerated in the August 2010 order appointing referee. The order appointing referee was not included in the record on appeal.

1. Trial Issues

The issues submitted to the referee for trial on April 13, 2011, included the following, as stated in the referee's June 29, 2011 report and recommendation after trial:

“[D]etermination of the proper level of child support and spousal support; retroactive child support and spousal support arrears; the date to which support may be modified retroactively based on each party’s claim that the other committed fraud or concealed income; whether support has been overpaid or underpaid; whether or not either party is entitled to reimbursement for the payment of the children’s tuition as of January 1, 2008; determination of the amount of reimbursement due to Julie for [the] children’s unpaid medical expenses; determination of the equalizing payment due, if any, for differences in values between the residence awarded to [Stephen] and the community interest in retirement accounts; determination of the characterization of the SS-8 retirement account as separate property or community property; determination of [the] amount of reimbursement due to the community for Julie’s post-separation use of a HELOC account; and determination of attorney fees and costs to be awarded to either party.”

The parties also entered into a pretrial “stipulation that Stephen owes Julie the sum of \$6,936 as reimbursement for various healthcare expenses for the minor children. The parties also stipulated that three retirement accounts . . . were community in nature, still existed, and are subject to division.” The record further reflects that the parties submitted trial briefs, which were not included in the record on appeal.

2. Trial Testimony

Our summary of the April 2011 trial focuses on the testimony and related evidence presented in connection with the issues of child support, spousal support, private school tuition, and attorney’s fees that Stephen has raised on appeal.

Stephen testified that the salary reflected in his February 2011 paycheck was \$15,000 per month. Because he was living and working in China, he also received additional compensation, such as a hardship allowance. According to Stephen, his total net pay for February 2011, after deducting an automatic payment of child support and other deductions, was \$3,951.57. However, Stephen admitted that his last paycheck for

2010 showed that his gross pay that year was \$587,018. He estimated that he earned \$200,000 in 2009.

Stephen has an outstanding tax obligation to the IRS in the amount of \$53,000. Although Stephen believes that his monthly income during 2006 was \$13,000, the IRS determined that his annual income for 2006 was well over \$200,000.

According to Stephen, he overpaid the children's private school tuition and also overpaid spousal support, in the total amount of \$31,957.28. Stephen was uncertain as to separate amounts he claimed for his overpayments of tuition and spousal support.

Julie testified that she pays the minor child's private high school tuition of \$962 per month. She also pays the monthly mortgage payment of \$2925, as well as the \$475 monthly cell phone bill and the \$600 monthly car insurance bill, which include payments for all three children's cell phones and car insurance for two of the children.

Julie's monthly income is approximately \$4,500. In 2009 her income came from Social Security benefits, spousal support, and child support, plus financial assistance from her father. She has a nursing degree but is unable to work due to her medical condition. She also received \$50,000 from a Fidelity account, as well as financial assistance from her mother after her father died. Julie did not know the exact amount of her mother's financial assistance.

Julie's brother, Jason West, also testified. According to Jason, he became involved in their mother's financial affairs after she contacted him regarding a check that was returned to her from the county assessor. The check was in the approximate amount of \$3,000, although their mother's property taxes are approximately \$800. Jason discovered that the check was for payment of the property taxes on Julie's property in Morgan Hill.

Jason then performed an accounting of their mother's checking account. He determined that from February 2009 to January 2011, Julie had "set up an online identity and accessed [their] mother's checking account and had subsequently set up a number of

online payees for her own personal benefit and had withdrawn money and paid bills to the sum . . . of \$307,492.” To support his claim, Jason provided a spreadsheet that he had created to show Julie’s unauthorized debits from their mother’s checking account, as well as a number of account statements, credit card statements, and check copies. He has turned these materials over to law enforcement. The referee admitted Jason’s spreadsheet into evidence but not the supporting documents, ruling that the documents had not been authenticated.

Jason stated that he created the spreadsheet because he “was asked to organize these expenditures by [the] detectives” The detectives responded to their mother’s house after they were contacted by neighbors who were concerned because Julie “had shown up” at the house. The detectives searched Julie’s purse in Jason’s presence and found their mother’s credit card. Jason was also aware that Julie had written a check on one of their mother’s accounts in the amount of \$40,000, made payable to “J. Factor.” (During her testimony, Julie denied knowing anyone named “J. Factor.”) The detectives told Jason that Julie had stated in an interview that the \$40,000 went “to her boyfriend for a gun deal.” He has been advised by the detectives that no criminal charges are pending against Julie, although an investigation is ongoing.

On cross-examination, Jason acknowledged that their mother has short term memory loss in the afternoon, but asserted that her doctor has said that she does not have dementia. She signed a power of attorney in his favor in January 2011 that put him in charge of her affairs. Jason was estranged from the family for about 14 years, until the time of his father’s death, and had been written out of his parents’ will. After their father died, their mother made a new will in which he is the primary beneficiary of her \$1 million estate.

C. Referee's Report and Recommendation After Trial

1. Findings

In his report and recommendation after trial, filed June 29, 2011, the referee made several findings with respect to the issues raised on appeal.

Stephen's credibility was assessed by the referee as follows: "For the most part, he was credible as a witness, although his alleged lack of comprehension for the basis for calculating his true income (taking into consideration his cost of living adjustments and various other components of his income) stretches the limits of credulity." As to Julie, the referee found that "[h]er testimony with respect to financial matters was adversely impacted by the impeachment testimony [of Jason], and I did not find her testimony concerning non-receipt of direct payments from Stephen to be credible."

Regarding Julie's claim for underpayment of support and Stephen's claim for overpayment of private school tuition, the referee found that "Julie is not credible on the issue of support underpayment, and . . . Stephen failed to seek modification of the private school tuition portion of the child support order. Neither party owes the other any money for underpayment or overpayment through June 30, 2010."

As to the claims of concealed income, the referee noted that "Stephen alleges that Julie concealed moneys received from her family while Julie alleges that Stephen concealed his bonus income and extra payments made by his employer for cost of living adjustments, foreign taxes and domestic taxes based on his job placement overseas." The referee found that Stephen did not conceal his income. Regarding Julie, the referee found as follows: "The testimony of Julie's brother Jason West that Julie took money from her mother's estate through the use of a power of attorney indicates that these funds should not be construed as periodic gifts [from] a family member, which could be found to be income for Julie for the purpose of calculating support. [Jason] gave the impression by his testimony that he expects that Julie will need to make restitution for the full amounts of the funds obtained by her. While the Referee questions the propriety of Julie's actions,

her conduct does not rise to the level of fraud directed at Stephen to warrant reexamination of the support calculations back to the inception of the case.”

The referee also determined that spousal support could be modified retroactively to July 1, 2010, pursuant to Family Code section 4320,² and that child support could also be modified retroactively to July 1, 2010.

Finally, the referee considered the parties’ requests for attorney’s fees, and determined that Stephen should contribute \$50,000 to Julie’s attorney’s fees pursuant to section 2030, based on the finding that Stephen has “87% of the parties’ combined incomes.”

2. Recommendations

The referee made several recommendations in his June 29, 2011 report and recommendation after trial. Pertinent to this appeal, the referee made the following recommendations: (1) Neither party owed the other party payment for support underpayment or overpayment through June 30, 2010; (2) Child and spousal support should be modified retroactively to July 1, 2010; (3) Spousal support should be determined as long term rather than temporary spousal support as of July 1, 2010; (4) Stephen should pay Julie permanent spousal support of \$2,000 per month, commencing July 1, 2010, and continuing until the death of either party, Julie’s remarriage, or further order of the court; (5) Stephen owes Julie spousal support arrears through March 31, 2011, in the amount of \$5,040; (6) Stephen owes child support of \$2,001 per month beginning July 1, 2010; (7) Stephen should pay private school tuition in the proportionate amount of \$489 per month; (8) Stephen should pay a percentage of his bonus income as additional child support; (9) Stephen owes child support arrears through March 31, 2011, in the amount of \$26,562; (10) Neither party should be awarded attorney’s fees under section 271; and

² All further statutory references are to the Family Code unless otherwise indicated.

(11) Stephen should pay Julie attorney's fees in the amount of \$50,000 pursuant to section 2030.

D. Trial Court Orders

In its "order after report and recommendation by referee after trial," filed on August 3, 2011, the trial court adopted the referee's recommendations in their entirety.

Also on August 3, 2011, the trial court issued an order after third report and request by referee that expanded the scope of the reference to the referee "to include determination of the extent of the community's obligation for the income tax liability for the tax year 2006, characterization of the outstanding income tax liabilities as community or separate, and the allocation of that debt between the parties, including credits for payments made from a party's separate property."

Stephen filed a timely notice of appeal from the August 3, 2011 order after report and recommendation by referee after trial on August 26, 2011.

III. DISCUSSION

At the outset, we note that Julie has not filed a respondent's brief. Her "failure to file a respondent's brief means that we 'decide the appeal on the record, the opening brief, and any oral argument by the appellant' (Cal. Rules of Court, rule 8.220(a)(2) . . .), examining the record and reversing only if prejudicial error is shown. [Citations.]" (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334.)

We will begin our evaluation of the issues Stephen raises on appeal with consideration of his claim that the trial court erred by failing to include Julie's income from illegal activity in its support calculations.

A. Calculation of Child Support and Spousal Support

1. Contentions on Appeal

Stephen contends that the trial court abused its discretion in awarding child support and spousal support because the court did not characterize the \$307,492 that Julie allegedly embezzled from her mother as Julie's income in calculating the support awards.

According to Stephen, the allegedly embezzled funds constitute income under the federal tax laws, citing *James v. United States* (1961) 366 U.S. 213. He also argues that the allegedly embezzled funds may be considered in calculating support because embezzled funds are analogous to an inheritance (*County of Kern v. Castle* (1999) 75 Cal.App.4th 1442, 1453-1454 [interest on inheritance may be considered income for support purposes]) or a lottery win (*County of Contra Costa v. Lemon* (1988) 205 Cal.App.3d 683, 687-688 [father's lottery proceeds should be considered in calculating family's annual gross income].)

2. Standards of Review

We review awards of temporary and permanent spousal support under the abuse of discretion standard. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283 (*Cheriton*).) “ ‘In awarding spousal support, the court must consider the mandatory guidelines of section 4320. [Citation.] Once the court does so, the ultimate decision as to amount and duration of spousal support rests within its broad discretion and will not be reversed on appeal absent an abuse of that discretion. [Citation.]’ [Citation.]” (*In re Marriage of Khera and Sameer* (2012) 206 Cal.App.4th 1467, 1480.) “ ‘As long as the court exercised its discretion along legal lines, its decision will be affirmed on appeal if there is substantial evidence to support it.’ [Citations.] ‘To the extent that a trial court’s exercise of discretion is based on the facts of the case, it will be upheld “as long as its determination is within the range of the evidence presented.” ’ [Citation.]” (*In re Marriage of Blazer* (2009) 176 Cal.App.4th 1438, 1443 (*Blazer*).)

An order for child support is also reviewed for abuse of discretion. (*Cheriton, supra*, 92 Cal.App.4th at p. 282.) “ ‘We cannot substitute our judgment for that of the trial court, but only determine if any judge reasonably could have made such an order. [Citation.] Our review of factual findings is limited to a determination of whether there is any substantial evidence to support the trial court’s conclusions. [Citation.]’ [Citation.]” (*In re Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1327.)

3. Analysis

Stephen has not provided any authority that directly supports the proposition that the trial court abuses its discretion in failing to characterize funds allegedly embezzled by a parent or spouse as income for purposes of calculating child support and spousal support. The general rule is that “income is broadly defined for purposes of child support. [Citations.] Subject to certain statutory exceptions . . . gross income ‘means income from whatever source derived . . .’ (§ 4058, subd. (a).) Although it specifically lists more than a dozen possible income sources, by the statute’s express terms, that list is not exhaustive. [Citations.] Rather, the codified income items ‘are *by way of illustration* only. Income from other sources . . . should properly be factored into the “annual gross income” computation. [Citations.]’ [Citation.] [¶] The judicially recognized sources of income cover a wide gamut. [Citations.]” (*Cheriton, supra*, 92 Cal.App.4th at pp. 285-286.) However, the decision in *Cheriton* did not consider the issue of whether funds alleged to have been unlawfully obtained may be factored into the annual gross income computation.

The referee in the present case did not factor the allegedly embezzled funds into Julie’s income in calculating the amount of spousal support and child support that Stephen should pay. In the June 29, 2011 report and recommendation after trial, the referee found that “[t]he testimony of Julie’s brother Jason West that Julie took money from her mother’s estate through the use of a power of attorney indicates that these funds should not be construed as periodic gifts [from] a family member, which could be found to be income for Julie for the purpose of calculating support. [Jason] gave the impression by his testimony that he expects that Julie will need to make restitution for the full amounts of the funds obtained by her. While the Referee questions the propriety of Julie’s actions, her conduct does not rise to the level of fraud directed at Stephen to warrant reexamination of the support calculations back to the inception of the case.”

Stephen argues that there was not substantial evidence to support the referee's findings that the funds allegedly embezzled by Julie would have to be returned and therefore those funds should not be characterized as Julie's income. According to Stephen, "the only evidence presented at trial was that Julie's estranged brother assumed she would be criminally charged."

The standard of review that applies to Stephen's substantial evidence challenge to the support orders is well established. "In general, in reviewing a judgment based upon a statement of decision following a bench trial, 'any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]' [Citation.] In a substantial evidence challenge to a judgment, the appellate court will 'consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]' [Citation.] We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment. [Citation.]" (*Estate of Young* (2008) 160 Cal.App.4th 62, 75-76.)

Where, as here, a trial by reference under Code of Civil Procedure section 638, subdivision (a) took place, the "referee's statement of decision is subject to appellate review using the same rules that apply to a trial court's statement of decision. [Citation.]" (*Bear Creek Planning Committee v. Ferwerda* (2011) 193 Cal.App.4th 1178, 1180, fn. 1.)

Our review of the referee's statement of decision in the present case shows that the referee found that Julie had utilized online banking to obtain funds from her mother. The referee further found that the funds that Julie obtained from her mother should not be considered income for purposes of calculating child support and spousal support, for two reasons. First, the referee found that the funds did not constitute periodic gifts. Second, the referee found that Julie's brother Jason had given the impression in his testimony that

he expected that Julie would have to make restitution of the funds that she had allegedly embezzled from their mother.

Having reviewed the trial record in its entirety, we determine that there is not substantial evidence to support the referee's findings that the funds that Julie obtained from her mother did not constitute income because (1) the funds were not periodic gifts, and (2) the funds would have to be returned as restitution. " 'Substantial evidence means such evidence as a reasonable fact trier might accept as adequate to support a conclusion; evidence which has ponderable legal significance, which is reasonable in nature, credible and of solid value.' [Citation.]" (*In re Marriage of Paboojian* (1987) 189 Cal.App.3d 1434, 1438 (*Paboojian*)). We turn first to the evidence concerning restitution.

Restitution

As Stephen points out, the referee's finding that that Julie would have to make restitution of the funds she had obtained from her mother was based on Jason's testimony. The pertinent testimony follows:

"[JULIE'S COUNSEL:] Are you aware whether or not the District Attorney's office has chosen to prosecute your sister?

"[JASON:] No, I'm not.

"[JULIE'S COUNSEL:] Have you made any inquiries?

"[JASON:] Yes, I have.

"[JULIE'S COUNSEL:] You've gotten responses from the District Attorney's office?

"[JASON:] No, not from the District Attorney's office.

"[JULIE'S COUNSEL:] The inquiries you've made are to the police?

"[JASON:] Yes, to the detectives.

"[JULIE'S COUNSEL:] When's the last time you made an inquiry of the detectives?

"[JASON:] It's been . . . a few weeks since I made an inquiry.

“[JULIE’S COUNSEL:] At that time there were no criminal charges pending?

“[JASON:] It was under investigation.”

Jason’s testimony supports, at most, a finding that Julie’s conduct in obtaining funds from her mother through online banking was under investigation by detectives. There was no testimony or other evidence to support a finding that Julie had been or was being criminally charged for her conduct or that she would have to return the funds she had obtained from her mother as restitution. Thus, the referee’s finding that the funds Julie had obtained from her mother should not be considered income—because Julie would have to make restitution of embezzled funds—is not supported by substantial evidence, since Jason’s testimony was not adequate to support that conclusion.

(*Paboojian*, *supra*, 189 Cal.App.3d at p. 1438.)

Monetary Gifts

We also determine that the evidence was not sufficient to support the referee’s finding that the funds that Julie obtained from her mother did not constitute monetary gifts that could be considered income. The issue of whether monetary gifts by a parent to an adult child should be considered income for purposes of calculating support was the subject of this court’s decision in *In re Marriage of Alter* (2009) 171 Cal.App.4th 718 (*Alter*).

The father in *Alter* received \$6,000 every month from his mother that he claimed was either a loan or a gift and therefore not income for purposes of determining his child support obligation. (*Alter*, *supra*, 171 Cal.App.4th at pp. 730-731.) This court concluded that “nothing in the law prohibits considering gifts to be income for purposes of child support so long as the gifts bear a reasonable relationship to the traditional meaning of income as a recurrent monetary benefit. But while regular gifts of cash may fairly represent income, that might not always be so. Therefore, the question of whether gifts should be considered income for purposes of the child support calculation is one that must be left to the discretion of the trial court.” (*Id.* at pp. 736-737; but see *In re*

Marriage of Schulze (1997) 60 Cal.App.4th 519, 529 [gifts are outside the purview of the child support statute].) This court further concluded in *Alter* that “[t]he periodic and regular nature of the payments means that the money is available to [the father] for the support of his children. The trial court, therefore, did not abuse its discretion in considering the amount to be income.” (*Alter, supra*, 171 Cal.App.4th at p. 737.)

The characterization of a parent’s monetary gifts to an adult child as income was also considered in *Kevin Q. v. Lauren W.* (2011) 195 Cal.App.4th 633 (*Kevin Q.*). In that child custody case, the trial court found that the mother had received “regular, recurrent monetary infusions made by [her father] . . . over a lengthy period of time, which relieved her of the need to work outside the home” (*Id.* at p. 646.) The appellate court upheld the trial court’s finding that the monetary gifts to the mother constituted income for the purpose of determining her need and ability to pay attorney’s fees, since “[t]he gifts were ‘periodic and regular’ and bore ‘a reasonable relationship to the traditional meaning of income as a recurrent monetary benefit.’ [Citation.]” (*Id.* at p. 647.)

Here, the evidence was inconclusive as to whether the funds that Julie obtained from her mother through online banking constituted “periodic and regular” monetary gifts that could be considered income for the purpose of calculating child support and spousal support. (*Alter, supra*, 171 Cal.App.4th at p. 737; *Kevin Q., supra*, 195 Cal.App.4th at p. 647.) On the one hand, Julie testified that she received an unknown amount of financial assistance from her mother. On the other hand, Jason testified that he believed that Julie did not have authorization to access their mother’s bank accounts online. Jason admitted, however, that Julie’s conduct with respect to obtaining funds from their mother was under investigation and no criminal charges were pending. The evidence was therefore insufficient to establish that the funds were not gifts, had been embezzled, and would be subject to an order of restitution to Julie’s mother.

For these reasons, we determine that the trial court abused its discretion in calculating support on the basis of findings regarding Julie’s income that were not

“ ‘ “within the range of the evidence presented.” ’ [Citation.]” (*Blazer, supra*, 176 Cal.App.4th at p. 1443.) We will therefore vacate the support orders and remand the matter for further proceedings regarding whether Julie obtained funds that may be considered income for purposes of calculating support and reconsideration of the orders for child support and spousal support.

B. Attorney’s Fees

Stephen also contends that the trial court abused its discretion in awarding \$50,000 in attorney’s fees to Julie, on the sole ground that the court erred in failing to consider the \$307,492 that Julie allegedly embezzled from her mother as Julie’s income in calculating the amount of attorney’s fees to be awarded under section 2030. He relies on the decision in *Kevin Q., supra*, 195 Cal.App.4th 633, which, as we have discussed, ruled that the trial court did not abuse its discretion in considering a father’s financial support of his daughter “to be support (or income) for purposes of calculating [her] ability to pay her attorney fees. The gifts were ‘periodic and regular’ and bore ‘a reasonable relationship to the traditional meaning of income as a recurrent monetary benefit.’ [Citation.]” (*Id.* at p. 647.) Stephen argues that Julie similarly “obtained regular cash infusions” from her mother.

This court has previously determined that “[p]ursuant to [sections 2030 and 2032], the trial court is empowered to award fees and costs between the parties based on their relative circumstances in order to ensure parity of legal representation in the action. It is entitled to take into consideration the need for the award to enable each party to have sufficient financial resources to present his or her case adequately. In assessing a party’s relative need and the other party’s ability to pay, it is to take into account ‘ ‘ ‘all evidence concerning the parties’ current incomes, assets, and abilities.’ ” ’ [Citation.]” (*In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 974-975, fn. omitted (*Falcone*)).

“In summary, the proper legal standard for determining an attorney fee award requires the trial court to determine how to apportion the cost of the proceedings equitably between the parties under their relative circumstances. [Citation.] In making this determination, the trial court has broad discretion in ruling on a motion for fees and costs; we will not reverse absent a showing that no judge could reasonably have made the order, considering all of the evidence viewed most favorably in support of the order. [Citation.]” (*Falcone, supra*, 203 Cal.App.4th at p. 975.)

Here, the referee determined that Stephen should contribute \$50,000 to Julie’s attorney’s fees pursuant to section 2030, based on the finding that Stephen has “87% of the parties’ combined incomes.” Having determined that the evidence was insufficient to support the referee’s finding that the funds Julie obtained from her mother should not be considered income, as discussed *ante*, we also determine that the evidence was insufficient to support the trial court’s calculation of the parties’ respective incomes for the purpose of awarding attorney’s fees under section 2030. (*Falcone, supra*, 203 Cal.App.4th at p. 975.) We therefore conclude that the trial court abused its discretion in awarding Julie attorney’s fees of \$50,000 in the absence of sufficient evidence of income.

Accordingly, we will vacate the attorney’s fees order and remand the matter for further proceedings regarding whether Julie obtained funds that may be considered income for purposes of calculating attorney’s fees and reconsideration of the order for attorney’s fees.

C. Private School Tuition

Finally, Stephen argues that he should either be reimbursed for his payment of private school tuition, be credited for such payment in support calculations, or receive a “hardship deduction.” We understand Stephen to contend that the trial court erred in requiring him to pay “a proportionate amount of private school tuition in the amount of \$489 per month” because the court did not include the funds that Julie allegedly embezzled in calculating his tuition obligation.

We reiterate our determination that the evidence of Julie's income was insufficient, as discussed *ante*. Since it appears that the trial court's order that Stephen pay a "proportionate" share of the private school tuition was based on the referee's findings regarding the parties' respective incomes, we also determine that the trial court abused its discretion in making the order for payment of private school tuition on the basis of insufficient evidence of Julie's income. We will therefore vacate the order for payment of private school tuition and remand the matter for further proceedings regarding whether Julie obtained funds that may be considered income for purposes of calculating her obligation to pay private school tuition and reconsideration of the order.

IV. DISPOSITION

The August 3, 2011 order is vacated and the matter is remanded for the limited purpose of further proceedings regarding whether respondent Julie Marie West-Dawes obtained funds that may be considered income for purposes of calculating child support, spousal support, attorney's fees, and her obligation to pay private school tuition and reconsideration of the orders for child support, spousal support, attorney's fees, and payment of private school tuition. The parties are to bear their own costs on appeal.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MÁRQUEZ, J.